

AMENDED IN ASSEMBLY MARCH 11, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2271

Introduced by Assembly Member Silva

February 18, 2010

An act to amend Section 1310 of the Probate Code, relating to probate.

LEGISLATIVE COUNSEL'S DIGEST

AB 2271, as amended, Silva. Probate: appeals.

Existing law establishes the right to appeal the making or denial of various orders or judgments under probate law. Existing law also provides that when an appeal is taken for the purpose of preventing injury or loss to a person or property the trial court may direct the exercise of the powers of the fiduciary, or may appoint a temporary guardian or conservator of the power, or a special administrator, to exercise the powers, as if no appeal were pending, as provided.

This bill would provide that the court may also appoint a temporary trustee to exercise the powers, as if no appeal were pending.

Existing law provides the appeal shall not stay the operation and effect of a judgment for money or order directing payment unless the payment is to be made from the decedent's estate or from the estate of a person who is subject to a guardianship or conservatorship of the estate.

This bill would provide that an appeal also stays a payment to be made from a trust estate under the jurisdiction of the court, *as provided*.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1310 of the Probate Code is amended to read:

1310. (a) Except as provided in subdivisions (b), (c), (d), and (e), an appeal pursuant to Chapter 1 (commencing with Section 1300) stays the operation and effect of the judgment or order.

(b) Notwithstanding that an appeal is taken from the judgment or order, for the purpose of preventing injury or loss to a person or property, the trial court may direct the exercise of the powers of the fiduciary, or may appoint a temporary guardian or conservator of the person or estate, or both, or a special administrator or temporary trustee, to exercise the powers, from time to time, as if no appeal were pending. All acts of the fiduciary pursuant to the directions of the court made under this subdivision are valid, irrespective of the result of the appeal. An appeal of the directions made by the court under this subdivision shall not stay these directions.

(c) In proceedings for guardianship of the person, Section 917.7 of the Code of Civil Procedure shall apply.

(d) An appeal shall not stay the operation and effect of the judgment or order if the court requires an undertaking, as provided in Section 917.9 of the Code of Civil Procedure, and the undertaking is not given.

(e) An appeal shall not stay the operation and effect of a judgment for money or an order directing payment of money, unless one of the following applies:

(1) A bond is posted as provided in Section 917.1 of the Code of Civil Procedure.

(2) The payment is to be made from a decedent's estate being administered under Division 7 (commencing with Section 7000), from the estate of a person who is subject to a guardianship or conservatorship of the estate under Division 4 (commencing with Section 1400), or from a trust estate under the jurisdiction of the court *under Part 5 (commencing with Section 17000) of Division 9*. However, a court may require bond as provided in subdivision (d).

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